In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR, APPELLANT

v.

VIOLA STERGIOS, A/K/A VIOLA STERYIAKIS

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA

MEMORANDUM FOR THE UNITED STATES

STATEMENT

By order of the Court dated October 12, 1964, the Solicitor General was invited to express the views of the United States with respect to this case. For the reasons stated below, we believe that it presents a substantial question of federal law.

Appellant, the guardian of the property of Constantine Neonakis, a non-resident minor and citizen of the Kingdom of Greece, instituted this suit in the District Court of Iowa in and for Woodbury County to reopen the estate of Nicholas Stergios, who had died testate in 1958 while a resident of Iowa (J.S.

App. A19).[1] Stergios' will, executed in 1954, had made no provision for Neonakis, his adopted son. Appellant alleged that under Iowa law[2] Neonakis was entitled to a two-thirds share of the estate, consisting of realty and personalty located in Iowa, because the adoption had taken place after the execution of the will (J.S. App. A19–A21). The relief sought was an order setting aside the final report in the estate proceedings and directing that the minor recover two-thirds of the value of the estate (J.S. App. A21).

The court dismissed the petition on the sole ground that appellant had not satisfied Section 567.8 of the Iowa Code, which provides that the right of a nonresident alien to take real or personal property located in Iowa by succession or testamentary disposition "upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real [or personal] property upon the same terms and conditions as residents and citizens" of the country of which such alien is a resident. The court found that appellant had not met the statutory burden (Sec. [illegible]8(2)) of establishing the existence of such a reciprocal right.

By a vote of five to four, the Supreme Court of Iowa affirmed. The majority rejected appellant's

[1] "J.S. App." refers to the appendix to the Jurisdictional Statement.

[2] See Iowa Code Annotated, secs. 600.6, 633.13, 636.31.

contention that the application of Section 567.8 to this case was limited by Article IX, section 2, of the 1951 Treaty of Friendship, Commerce and Navigation between the United States and the Kingdom of Greece 1954(2) U.S.T. & O.I.A. 1829, T.I.A.S. No. 3057, which provides:

> Nationals and companies of either Party shall be permitted freely to dispose of property within the territories of the other Party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition.

The majority reasoned that this provision, construed together with other provisions of the treaty, did not prevent Iowa from imposing the condition of a reciprocal right on the right of a non-resident Greek national to acquire property within the State (J.S. App. A8–A14). The dissenting Justices construed the treaty to provide that a non-resident Greek national who was prevented by State law from acquiring property by succession must be allowed at least five years within which to dispose of it, and ruled, as required by Article VI of the Constitution, that the treaty prevailed over the State statute (J.S. App. A15–A18).

DISCUSSION

The Iowa courts have held that State laws of inheritance may be applied so as to defeat the right of a non-resident Greek national to take by succession real and personal property located within the State. This holding depends on a construction of a

treaty between the United States and Greece. That construction, in the view of both the Department of State and the Greek Government, is in error. Since the correct interpretation of the treaty is a matter of considerable importance to the United States in the conduct of its foreign relations,[3] we believe that review by this Court is warranted. Cf. *Kolovrat* v. *Oregon*, 366 U.S. 187, 191.

In letters to the Ambassador of the Kingdom of Greece (App. A, *infra*, pp. 7–9) and the Department of Justice (App. B, C, *infra*, pp. 10–13), the Department of State, which negotiated the 1951 Treaty on behalf of the United States, has expressed the view that, while the treaty does not guarantee "national treatment" with respect to rights of inheritance to non-resident Greek nationals, it does preclude the application of State law as a total bar to their inheritance of property located in the United States. In its opinion, the treaty guarantees that, irrespective of limitations imposed by State law, a Greek national shall enjoy the right, for a period of at least five years, freely to dispose of any property which he could have inherited if he were an American national.

The State Department's conclusion—which, on familiar principles, is entitled to great weight, *Kolovrat, supra*, at 194—is supported by the terms of the treaty. Article IX, section 1(a) (J.S. App. A29–A30) provides that Greek nationals shall be accorded "national treatment" with respect to the acquisition

[3] The Greek Government called to the attention of the Department of State the decision of the Iowa trial court and the then pending appeal to the Supreme Court of Iowa. See App., *infra*, pp. 7–8.

of "ownership rights in land, buildings, and other immovable property" within the United States, subject to the laws of the States in which such property is located.[4] Section 2 of Article IX, however, expressly provides that if a national of either party to the treaty, is prevented because of alienage from receiving national treatment with respect to the acquisition of property through testate or intestate succession, he shall have a period of at least five years within which "freely to dispose" of such property. This provision is applicable to the present case and limits the operation of the Iowa statute to bar the inheritance of appellant's ward. The reasoning of the Iowa Supreme Court (J.S. App. A8) that the second section applies only to the disposition of property which has been acquired in accordance with State law is contrary to the language and purpose of the treaty, which confers the right "freely to dispose of property * * * with respect to the *acquisition* of which * * * alienage has prevented * * * [a national] from receiving national treatment * * *." (Emphasis added.) See *Clark* v. *Allen*, 331 U.S. 508.[5]

[4] Section 1(b) of Article IX permits the Greek Government to restrict in some respects the "national treatment" accorded American nationals.

[5] Contrary to the statement of the Iowa Supreme Court (J.S. App. A8), there is no provision in the Treaty which "supersedes" Article IX, section 2. The Court's reliance on Article XXIV, section 1 (J.S. App. A8) is misplaced: that section states only that "national treatment" shall not be taken to imply "immunity from the laws and regulations of a Party *which apply in a non-discriminatory manner to nationals* * * * *of both Parties*" (J.S. App. A31). (Emphasis added.)

For the reasons stated, it is the view of the United States that this case presents a substantial question of federal law.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

DECEMBER 1964.

APPENDIX A

DEPARTMENT OF STATE,
Washington, July 30, 1963.

His Excellency ALEXANDER A. MATSAS,
Ambassador of Greece.

DEAR MR. AMBASSADOR: I refer to a note No. 108/ST/5 dated January 17, 1963 from the Chargé d'Affaires ad interim of Greece, calling attention to a case pending before the Supreme Court of Iowa on appeal from the district court of Iowa in and for Woodbury County, entitled:

> *"Stanley M. Corbett, Guardian of the property of Constantine Neonakis, a Minor, plaintiff-appellant,* v. *Viola Stergios a/k/a Viola Steryiakis, defendant-appellee."*

The case concerns the question of the right of a resident of Greece to inherit property in the United States under an Iowa statute requiring existence of a reciprocal right of inheritance upon the part of residents and citizens of the United States to inherit real property in Greece.

The Chargé d'Affaires' note requests that the Department of State cause to be submitted to the Supreme Court of Iowa the view of the Chargé d'Affaires that aside from the fact that under the Civil Law of Greece aliens are entitled to reciprocal rights of inheritance, as communicated on March 20, 1945 to the Department by the (then) Ambassador of Greece, the Treaty of Friendship, Commerce and Navigation be-

tween the United States and the Kingdom of Greece, signed at Athens on March 3, 1951, makes it unnecessary to prove reciprocal rights as required under the Iowa Code.

The Department of State confirms that on March 20, 1945 the Ambassador of Greece at Washington communicated to the Department the following statement regarding the question of reciprocal rights of inheritance:

> "In the question as to whether Sections 259, 259.1 and 259.2 of the California Probate Code applies to heirs and legatees, residents and citizens of Greece, the Greek Ambassador begs to certify the reciprocity defined in the above Sections of the California Probate Code is accorded citizens and residents of the United States, for the reason that according to the Civil Law of Greece aliens enjoy the same civil rights without any exception to hereditary rights.
>
> "Article 4 of the Greek Civil Law of the old one and the newest published on March '15, 1940, reads as follows:
>
> "'An alien enjoys the same civil rights as our citizens.'
>
> "The civil laws of Greece relating to inheritance where the citizens of other countries are involved, are inclusive and not exclusive. That is to say, practically all aliens, wherever they reside, are permitted to inherit from any person who leaves an estate there, and if there are alien heirs and non-residents of Greece, such heirs are expressly permitted to be represented by their Consuls and collect through them their distributive shares."

The Department is fully satisfied that reciprocal rights of inheritance exist under the laws of Greece.

With regard to the 1951 Treaty of Friendship, Commerce and Navigation, it is the view of the De-

partment of State that the intent of Article IX(1) is to accord national treatment to Greek citizens in respect of acquisition of real property through inheritance, subject to local laws which may limit the rights of aliens to *hold* real property. Article IX(2) sets a limitation upon this exception for state laws prohibiting alien ownership of realty by requiring that the alien be allowed five years in which to dispose of real property he has acquired through inheritance.

Under this interpretation, the Department would agree with the statement that the Treaty eliminates any necessity of proving reciprocity of treatment where the property in question is realty and thus subject to Article IX.

It is suggested that the Embassy may wish to bring the foregoing to the attention of the Iowa Court, together with a statement from the Ambassador to clarify, to the extent desired by the Court, the rights of residents and citizens of the United States to inherit in estates in Greece. It is not intended, of course, that this note should be interpreted as passing upon the merits of the case presently before the Iowa Court.

I regret the delay in replying to the Chargé d'Affaires' note but trust that the foregoing may be helpful in connection with this case.

Sincerely yours,

ABRAM CHAYES,
The Legal Adviser
(For the Secretary of State).

APPENDIX B

DEPARTMENT OF STATE,
Washington, October 26, 1964.

The Honorable JOHN W. DOUGLAS,
Assistant Attorney General,
Civil Division,
Department of Justice.

DEAR MR. DOUGLAS: I refer to your letter of October 15, 1964, requesting the views of the Department of State on a question presented by the appeal from the Supreme Court of Iowa to the United States Supreme Court in the case of *Stanley M. Corbett, etc.* v. *Viola Stergios, a/k/a Viola Steryiakis* (Sup. Ct. No. 179). That question, as stated in appellant's jurisdictional statement is:

> Whether the Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece nullifies the requirement of Section 567.8 of Iowa, 1958, that Appellant nonresident Greek alien must prove the existence of reciprocal rights of succession before he may acquire an interest in Iowa real estate by intestate succession from his adopting father.

It is the view of the Department of State that the intent of Article IX (1) of the Treaty of Friendship, Commerce and Navigation between the United States and the Kingdom of Greece, signed at Athens on March 3, 1951, is to accord national treatment to Greek citizens in respect of the acquisition of real property through inheritance, subject to local laws

which may limit the rights of aliens to *hold* real property. Article IX (2) sets a limitation upon this exception for state laws prohibiting alien ownership of realty by requiring that the alien be allowed five years in which to dispose of real property he has acquired through inheritance. The Department of State is of the opinion that the Treaty eliminates any necessity of proving reciprocity of treatment where the property in question is realty and thus subject to Article IX.

The Department of State has expressed this view in an official communication to the Ambassador of Greece dated July 30, 1963, the text of which is enclosed.

Sincerely yours,

ANDREAS F. LOWENFELD,
Acting Legal Adviser
(For the Secretary of State).

(Enclosure: Text of Official Communication of July 30, 1963.)

APPENDIX C

DEPARTMENT OF STATE,
Washington, December 7, 1964.

The Honorable JOHN W. DOUGLAS,
Assistant Attorney General,
Department of Justice.

DEAR MR. DOUGLAS: I refer to your letters of October 15 and October 29, 1964, in regard to a question presented by the appeal from the Supreme Court of Iowa to the United States Supreme Court in the case of *Stanley M. Corbett, etc.* v. *Viola Stergios, a/k/a Viola Steryiakis* (Sup. Ct. No. 179). In a subsequent telephone inquiry regarding this matter, you have requested the view of the Department of State as to the effect of Article IX of the Treaty of Friendship, Commerce and Navigation between the United States and the Kingdom of Greece, signed at Athens on March 3, 1951, on the acquisition of personal property by nationals of either country in the territory of the other.

Paragraph 2 of Article IX, although designed primarily to assure that aliens shall have the right to dispose of real property which they are not permitted to own under the law where the property is located, does not limit itself to real property. It relates to property in general. As applied to the question whether paragraph 2 accords any right with respect to the acquisition of property, the terminology of the paragraph is vague. It is, however, based upon the premise and intent that the aliens shall have the right,

in cases where because of alienage they are prevented from enjoying all the benefits that a national would enjoy in regard to the taking of title to property through inheritance or succession, to receive the property and to effect a disposition of it within a period of five years.

Attention is directed to the use of the term "succession" in paragraph 2, in the light of customary references to inheritance of real property and succession to personal property. While paragraph 2 does not state specifically that the aliens shall have national treatment with respect to the right to succeed to personal property, it appears that the granting of a right to effect a disposition within a specified period of *any* property to which they would succeed on a national treatment basis except for their alienage is indicative of a general intent that so far as possible they should be allowed to take property, or the proceeds from the disposition thereof, through testate or intestate succession.

Sincerely yours,

RICHARD D. KEARNEY,
Deputy Legal Adviser.

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